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No. 93-1870

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1993

RAYMOND B. BENZINGER,
AIDANT, INC.,
ALLEN A. IZADPANAH,
for himself and
for Aidant, Inc.
and
WALTER T. CHARLTON,

Petitioners

vs.

SIREX, USA, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

REPLY BRIEF FOR PETITIONERS

WALTER T. CHARLTON
Counsel of Record
2009 North 14th Street
Suite 410
Arlington, Virginia 22201
(703) 525-8387

Counsel For
All Petitioners

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Introduction to This Reply Brief:

Respondents seek to cast this case as a mere collection action in which petitioners should be sanctioned for failing to recognize the finality of State Court Judgments.

This position is false and fraudulent. On the contrary, this case represents a trampling, utter destruction, of substantial constitutionally guaranteed civil rights. The most egregious of those violations is the denial of the subpoena process (though totally authorized by state law-- Va. Code § 8.01-506.1) and punishment of counsel for use of that process, even though, as a result, the frauds complained of in this case were exposed and the subpoenas were never honored. The Court then ignored those frauds in favor of enforcing its own judgments which were VOID for want of jurisdiction on the underlying extra-territorial levy.

If allowed to stand, the result is the superseding of Constitutionally Guaranteed rights in favor of enforcement of jurisdictionally and procedurally flawed, hence VOID, judgments on a debt that does not exist by persons charged under state law with fiduciary duties not to act as they did in defrauding their ward. This result opens the door for untold mischief which is inimical to our entire judicial history. Also, no state process should be allowed to supersede federally guaranteed rights. For this reason Certiorari should be granted.

SUMMARY OF ARGUMENT FOR GRANTING CERTIORARI:

In this case Petitioner Izadpanah, a resident of Maryland, was deprived of this property rights by an extra-territorial attachment by a Virginia Circuit Court without any valid writ of attachment ever

being issued against him[1]/. Thereafter, his stock was purportedly "sold" at an "auction" which took place without notice to him or his counsel. Further, the seller and the buyer were the same person (Federal Computer Corporation-FCC -covertly using the name of Sirex as the seller). Therefore, there could have been no legal "transfer" at the time of the purported "sale". Moreover, at the time of all of these transactions FCC stood, by virtue of a final Virginia Supreme Court Judgment, in Boeing[2]/ in the position of a fiduciary with respect to both shareholder Izadpanah and the original debtor corporation, Aidant, Inc. FCC had received monies from Aidant and used those moneys to conduct the disenfranchisement of the shareholder

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[1]/ The writ actually issued was against the wrong judgment, not against him.

[2]/ Izadpanah v. The Boeing Joint Venture, 243 Va. 81, 412 S.E.2d 708 (1992).

presently suing FCC and the other fiduciaries for theft and misapplication of funds.

Respondents own brief, also in the name of the purported creditor, Sirex, demonstrates the truth of the gravamen of Petitioners' allegations as to the fraud alleged. There can be no question as to these basic facts.

If as this case so far holds, a massive fraud can violate our entire concept of property law, and the court can bar access to the subpoena process which actually uncovered that fraud and punish counsel with massive sanctions, no man's property is safe within these United States. If the proposition for which this case stands, dishonest persons with access to attorneys willing to bend facts will have unlimited license to steal. That is what this case is really about. For this reason, this case is of vital importance to

our system of justice and certiorari should be granted.

Counter Statement of Respondents Purported Facts:

The real parties in interest in this case, fiduciaries who misappropriated an entire corporation, Aidant, Inc., with its several millions in corporate assets and an 89 million dollar ($89,000,000.) Government contract which was diverted to their own corporation[3]/, have the brass to continue

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[3]/ The Petitioner Izadpanah claimed in his derivative lawsuit, one of the component cases of this petition, massive theft of corporate assets by Respondents herein. That claim was upheld by the Virginia Supreme Court which reversed and remanded Boeing, supra, to require Respondents herein to prove in the Circuit Court the alleged misapplication of property transactions were "fair to the corporation". (See decision in Appendix d1 to d5 Petition). However, due to the adulteration of the Circuit Court collection process complained of herein, Petitioner Izadpanah has been deprived of his stock in Aidant, Inc, and also his right, via dismissal of the derivative suits, to require that "fair" accounting via the stockholders derivative suits he brought. Of course a part of that "fair accounting" would have been payment by the controlling fiduciaries out of corporate

to misrepresent the most basic fact of this case even before this court.

In this case Respondents seek to divert the main thrust of Petitioner's Petition, from claims based upon Fifth Amendment deprivation of a principal shareholder's (Izadpanah) property rights[4]/ in stock in a close corporation, Petitioner Aidant, Inc., worth approximately three million dollars, to the failure of Petitioners' counsel to accept as final defective and fraudulent judgments

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assets of the underlying guaranty debt. This, of course, is an inconceivable, outrageous and unconstitutional result of misapplication of a state law in contravention of Constitutional standards.

[4]/ Those property rights are:

1. The ownership of the stock itself, purportedly "lost" through an extra-territorial levy in Maryland where the Virginia Court had no jurisdiction; and

2. The right to continue the shareholder's stockholder derivative suit (filed before he "lost" the stock) for theft of over $3 million in Aidant cash and properties.

obtained by Respondents by a purported forced sale for the amount of $500. which effectively stripped Petitioner of all stock ownership interests, and his ability to continue his stockholder's derivative suit to recover the diverted corporate assets.

Respondents continue their previous strategy of character attacks to oppose this petition for certiorari. In doing so they continue to assert the following material false propositions:

1. That Sirex U.S.A., Inc. is now a party to this case. It is not.

2. That Petitioner Izadpanah now owes Sirex money. He does not. Any debt he had was on a loan guaranty. That debt was fully paid by FCC, a fiduciary/trustee using funds obtained from Aidant, Inc. for which FCC was a custodian/fiduciary. Nor did Izadpanah owe FCC money, see 3 (below).

3. That Petitioner Izadpanah, who

had filed stockholder's derivative suits for theft by the Respondents FCC etc. herein, owes or owed FCC (a fiduciary doing the thefts) money. He does not and never did.

4. That the discovery by Petitioners of the fact of FCC's collection actions of the alleged "Sirex debt" in the name of Sirex in breach of its fiduciary duty to its fellow shareholder does not warrant use of subpoenas to prove the existence of the ruse. The Virginia collection code, 8.01-506.1, authorizes this action by an alleged debtor during the collection process.

5. That the extra-territorial service of process and the ex parte judgment acquired by fraud in the court should be ignored by Petitioners' counsel because those judgments are subject to the concept of "finality of judgments". Judgments acquired where the court has no jurisdiction or acquired by fraud on the

court are always subject to collateral attack at any time.

(6) There never was a time when the legal or moral position of either Charlton or Benzinger was impeached by the testimony of Mary Jolma, Esq. The facts are directly opposite. Respondents' brief includes only partial transcript extracts of Mrs. Jolma's testimony on the question of seeing a letter from Gross purporting to show the balance due on the debt. The partial transcript submitted by "Respondent" is misleading. Mrs. Jolma's testimony supports entirely Petitioner's position that no accounting was ever made, much less one to be believed from a counsel conducting these fraudulent collection activities after opposing counsel learn of the existence of the deception. This question is not worthy of further discussion, except to observe that the complete transcript on that subject is

included as appendix f1 etc. should the court be interested in further exploring this twisting of the facts by Respondents.

(7) Respondent's Opposition States the Events of this case substantially our of sequence:

The correct sequence of events was:

1. Misapplication of funds from Aidant, Inc by the fiduciaries.

2. The debt was "paid in full (12/90)".

3. Petitioner Izadpanah filed his derivative lawsuit.

4. Additional funds were paid to Sirex by FCC to purchase the balance of the consent judgment against Izadpanah, July 29, 1991.

5. Beginning of the collection process in the name of Sirex, by FCC.

6. Extraterritorial attachment occurred, August 31, 1991.

7. Boeing, supra, was decided on

January 10, 1992 by the Virginia Supreme Court, determining that FCC, Hummel and Crowe had the duty to prove the fairness of all conflict of interest transactions involving Aidant (Appendix d1-d5).

8. Discovery in late 1992 that no debt was due Sirex and that FCC was collecting party.

9. Attempts to get subpoenas to prove no debt balance due October, 1992.

10. Assessment of Sanctions for issuance of subpoenas, March 1993.

(8) Specific misstatements of fact in Respondent's brief, are addressed seriatim following.

1. Opp. P. 4 ¶ 1 "Issuing Subpoenas for an improper purpose".

In fact the subpoenas were entirely proper and after explanation to the collection Commissioner Mr. Dunn, the Commissioner expressed satisfaction with the explanation. (See Appendix j1, 2

Commissioner's letter to Raymond Benzinger).

2. Opp. P. 5 ¶ 2 Izadpanah "fled his creditors".

In fact Izadpanah then rendered penniless by Respondent's acts, obtained a temporary job in Saudi Arabia.

3. Opp. P. 5 F/N 1 "Izadpanah has never prevailed on a single substantive issue".

In fact, Izadpanah won the difficult Virginia case of Izadpanah v. The Boeing Joint Venture, (supra) reversed and remanded for proof by Respondents herein that alleged misapplication of funds were "fair" to the corporation Aidant, Inc.

4. Opp. P. 6 ¶ 2. "the elusive Izadpanah proved to be 'collection proof'"

The reiteration of self-serving derogatory information while being subjected to interrogatories after stripping him of his stock worth 3 or 4

million dollars by Sirex who at that time, no longer had any interest in this case, is utterly outrageous.

Gratuitously, counsel sees fit to mention "Gucci loafers". That is not only untrue and irrelevant but is never mentioned in the record.

5. Opp. P. 7 ¶ 2. This [levy] stock turnover order was never appealed and is final.

In fact the stock turnover order was appealed to the Virginia Supreme Court which denied review. Further, it was defective procedurally, based on the wrong writ, and extra-territorial in effect (on Maryland property)--hence void for want of jurisdiction by the court.

6. Opp. P. 7 ¶ 2. "Izadpanah's stock in Aidant, Inc. was sold after notice of the sale was given to all interested parties, including Izadpanah."

This statement is outrageously

false.

a. No notice was given to Izadpanah or his counsel.

b. No "sale" ever took place because the attaching party (FCC) was the same party as the "purchaser" FCC; and further

c. No debt was due at the time.

d. The name of the seller--purportedly Sirex--was a false representation of interest.

7. Opp. P. 8 ¶ 2. "Izadpanah made no offer on the stock, and made no effort to pay his indebtedness on the underlying judgment."

This statement is false and misleading for these reasons:

a. Neither Izadpanah nor his counsel ever knew of the purported sale--which took place one day before the purported advertised day, thus they could take no action.

b. The "sale price" was $500, on

stock worth over $3 million.

c. No sale took place because the buyer and the seller were the same persons.

8. Opp. P. 10 ¶ 2. "[Petitioners] served subpoenas duces tecum upon: Izadpanah's judgment creditor", . . .

In fact, as it turns out the subpoenas were served upon the former judgment creditor.

9. Opp. P. 11 ¶ 2. "The procedure invoked [by petitioners] was improper under the Virginia Supreme Court rules of procedure (which provide 21 days to respond to any request for documents). See, e.g. Virginia Supreme Court Rules 4.5(b)(5) and 4.9."

This is wrong. Virginia collection procedures relied upon specifically authorize a shorter time for response where collection procedures are on-going. See Virginia Code 8.01-506.1 which states:

*** "However, notwithstanding the provisions of Rule 4:9[5]/, a subpoena duces tecum issued pursuant to this section may (i) be directed to a party to the case and (ii) be issued by a commissioner and may direct that evidence and any custodians subpoenaed be produced before the commissioner." This is exactly what Petitioners did.

10. Opp. P. 14 ¶ 1. "In 1991 Izadpanah lost all of his stock in Aidant, Inc. and therefore had no standing to initiate his various stockholder derivative actions."

In fact, Izadpanah initiated those lawsuits long before he allegedly "lost his stock".

Opp. P. 14 ¶ 2. "... his attorneys have repeatedly attempted to *** regain

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[5]/ Rule 4.9 (b) requires 21 days for production of documents. However, by the specific provisions of Code § 8.01-506.1 this rule is not applicable to the facts here.

standing to file derivative suits".

This is false. He undisputedly owned the stock at the time he filed his derivative suits.

11. Opp. P. 18 ¶ 1. "[Benzinger] either knew or suspected that his subpoenas would be quashed, and therefore sought to maximize disruption to Respondents and their attorneys using an improperly short return period to achieve these ends."

That conclusion is utterly ridiculous. In fact, the subpoenas have never been responded to and the Commissioner, upon being given a complete explanation by Benzinger stated he was completely satisfied with Benzinger's explanation of the process used, he said ... "clarify and take care of all of my concerns"... (Appendix page i 1).

12. Opp. P. 19 - 20. "Mary Jolma [Esq.], admitted that Sirex counsel [Gross] had been given a full written accounting of

the judgment balance."

"Having been impeached by their own associate"

These statements are intentionally false and misleading.

a. Gross didn't represent Sirex.

b. No accounting was ever given.

c. No money was owed.

d. There was no impeachment--to so state is false.

See transcript of Mary Jolma's testimony Appendix f 1 to f 15 which was truncated in Respondent's opposition and then relied upon to show the false result espoused.

13. Opp. P. 20 ¶ 3. "Petitioner's evidence at trial below included an Affidavit by Sirex U.S.A.'s President Eddie Chu". (Gross Appendix a 9).

a. This statement is wrong. It was not Petitioner's evidence at trial below. Rather, that affidavit was submitted

directly to the court by Mr. Gross.

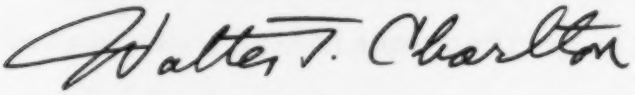
b. That affidavit was dated after the subpoenas were requested.

c. That affidavit does not contradict Petitioner's position. Rather it entirely supports the proposition that after the date of July 29, 1991, when FCC bought the judgment, the debt to Sirex was gone, extinguished and over. No amount of rhetoric can change that fact.

Conclusion:

For all of the foregoing reasons, the result in this case offends the principles of fair play and property rights of our federal constitution, specifically the due process clauses of the First and Fourteenth Amendments to the Constitution, and the right to seek judicial redress (for the corporate thefts) which was denied petitioners when the subpoenas were quashed and sanctions assessed.

Respectfully submitted,



Walter T. Charlton
2009 N. 14th Street
Suite 410
Arlington, Virginia 22201
(703) 525-8387

Counsel for All
Petitioners

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MARY JOLMA,

DIRECT EXAMINATION

BY MR. BENZINGER:

Q. Would you state your name, please?

A. My name is Mary Jolma.

Q. And where are you employed?

A. I am employed with the law offices of Raymond B. Benzinger, in Arlington, Virginia.

Q. And how long have you been there?

A. Almost four years.

***

Q. Ms. Jolma, did you play any role in the SIREX case?

A. I did indeed, but not until very late though. I brought in the research, and produced the research, and consulted on a particular question.

Q. And what was that question?

A. The problem that was being had by Mr. Benzinger and Mr. Charlton was an

inability to get a hold of certain information, and through some bizarre sets of circumstances, we started to come up with some things that weren't quite right.

In an effort to resolve that, I was asked how a debtor could come to obtain documents that would answer the kinds of questions that we were asking; and I am the firm researcher, and that's what I do best. I can find almost any needle in any haystack anywhere. It is just a knack that I have.

And I did the research on this one, and came up with a particular statute, and ---

MR. GROSS: Your honor, at this point I think I am going to object. We are going back again through the isuance of the subpoenas, and you have already ruled that they were improper, and with all due respect, they want to put her on basically to run through all of that again. We had

two hours of hearings --

THE COURT: Overruled. I am not going to run through all of that again, but I think she can, I guess, say what she reported to Mr. Benzinger.

BY MR. BENZINGER: (Resuming)

Q. I have passed up documents to you. Would you explain to the court what they are, please?

A. Yes sir. There are two pieces of paper here, Your Honor. One of them says 1978 Version at the top, and one says 1986 Amendment. I found the 1986 Amendment of 8.01-506.1, You Honor, and in reading that it appeared to do what we were interested in doing.

Namely, we had an ongoing Commissioner's Interrogatory proceeding, and so when I read this statute, this is what I read it to be. In any proceeding under the provisions of 8.01-506, which was the ongoing Interrogatories that were

happening at the time, a subpoena duces tec[t]um [sic] may be issued for books of accounts or other writings containing material evidence.

Now, the kinds of things that we were looking for were who owned -- who was informed of this judgment, and we were asking direct questions about how much was owed, because we had now found a piece of paper from Milikan and Michaels saying that there was nothing owed on this thing.

You know, we are sitting around scratching our heads, and wondering why we are going through this if this is in fact paid. It was a question that had to be asked.

It also says that we don't have to -- it says not withstanding the provisions of 4:9, a subpoena duces tecum issued pursuant to this section may be directed to a party to the case.

Who is the party in the case at

the time? Clearly, as far as we knew, it was SIREX, and as far as we knew also, it was Mr. Crowe. It was sometime after we issued the subpoenas that we found out that Mr. Crowe's judgment had been released, and that we had stumbled across that one day going though the file.

We had a Commissioner, and if you read the subpoenas carefully, it does not ask the people to appear. It asks that the documents be returnable to the Commissioner, unlike -- or not unlike what you do with the Clerk of the Court. You know, please return this to the Clerk of the Court. It does not mean that you physically have to appear.

If the subpoena duces tecum is against a plaintiff who is a non-resident of the Commonwealth, the service may be on the attorney-at-law. Well, clearly SIREX was a non-resident of the Commonwealth. They were from New York. So, we served it

upon Mr. Gross.

It also says that notwithstanding the provisions of Rule 4:9, and it provides for a variation on themes on how the subpoena duces tectum could be issued, despite what 4:9 says.

So, it permits us to vary outside the time frames of 4:9, and the procedures set out in 4:9. To be sure I had this right, Your Honor, and I do what I often do, and that is that I had a question about one particular phrase in here, and it was -- it doesn't say who gets to issue the subpoena. It doesn't say which party to the case, or which indiviual.

And I went and I looked back, Your Honor, to the 1978 prior version of this, and I think this one is real clear as to what is going on. It says that in any proceeding under the provisions of 8.01-506, a party may file in the Clerk's ofice in --

MR. KURZ: Your Honor, I am going to object. This is legal argument. If Ms. Jolma wants to testify as to what she did, then that's fine, but not her argument on her interpretation of the law.

THE WITNESS: Well, I did go back to 506.1 in its original version, Your Honor, and out of that I think it is very clear that the intent of this was to enable a debtor to find out how much he owes, and to find out anything relevant to his judgment.

And I reported that back to Mr. Benzinger, and based on that research, I felt that we had a good faith basis in fact, based on what we had heard, and what we had learned, and what we thought we knew, and the inconsistencies at the time, and now we had a good basis in the law.

We had an ongoing Commissioner's proceeding, and the statute that allowed us to do it, and that's why we went forward

the way that Mr. Benzinger did.

MR. BENZINGER: If you would mark this as Exhibit 3.

(At this time, Defendants Exhibit Number #3 was marked for identification.)

BY MR. BENZINGER: (resuming)

Q. Ms. Jolma, you have mentioned the document that you have before you at the time that you did your research. I show you a document which has been marked for identification as Exhibit #3, and --

MR. GROSS: I am going to object, Your Honor. Again, we are going back into the whole case, and reopening it. It is one thing to ask her what she did, and how it got to him, and so on.

I am not sure how that is relevant either, but now we are going back into the whole case, and reopening the issuance of the subpoenas, Your Honor. If we we are going to do that, then we are going to have to put on rebuttal.

THE COURT: I really don't know what he has shown her. I mean, I don't know what --

MR. GROSS: He has shown her the Milikan and Michael document again, which was presented to you previously at the prior sanctions motions, and --

THE COURT: Is this the one that says account closed, or something like that?

MR. GROSS: Yes, and going into all of that all over again.

THE COURT: Objection sustained.

BY MR. BENZINGER: (Resuming)

Q. Once you found the statutes, and did your research, then what did you do next?

A. I reported it back to you.

****

Q. Did you look in the files to see if there was an accounting in the files?

A. Yes, I did.

Q. And you did not see my June, 1991, letter to Mr. Benzinger setting out an accounting of monies owed?

A. I did indeed.

Q. You did see that?

A. I did, sir. It is my recollection of that letter, Your Honor, that it merely stated a balance. It says this much is owed in the judgment. I think the question that we have been asking from my recollections was how they got to the numer, and there is nothing in my file, and nothing in that letter that I recall that says how that number was arrived at from the original $40,000 amount.

* * *

Q. Now, you had access to the court records, isn't that correct, in terms of what the amount of the judgment was, and so on?

A. Sure. It is public record.

Q. And you had my accounting as to

the balance, and in terms of what the amount of the judgment was?

A. Sure. I had your statement of what your balance was; yes, sir.

Q. Okay. Were you involved at all in the determination of when -- of the timing of the subpoenas, and when they should be issued?

A. When?

Q. Yes.

A. Well, I think the decision to issue the subpoenas -- let's see if I can remember that conversation.

I think it was sort of an ASAP type thing. Let's get these things issued as soon as possible, and it is also my recollection that there might have been a court date coming up, but that's a vague recollection.

I can't remeber why I think that, but that is sort of sticking in my mind; that there was something already coming up,

and this thing hit the fan, and all of this sort of happened all at the same time, and were very close together.

When this came to us, I think it was around the end of September, and I did the research about the same time. Mr. Charlton had done some telephone research, and had gotten his version together for me to discuss with him.

They discussed it with me, and I spent, you know, three or four hours checking on this stuff, and then the --

Q. My question was, Ma'am, were you involved in the determination of the timing of when these subpoenas would be issued and served?

A. I think I was to the extent that I was part of the conversation when the decision was made to get this stuff out, and once I came up with it, to get these things out ASAP, and I don't think there was any other --

Q. Okay. Were you aware then of the timing of the issuance of the subpoenas, or the service of the subpoenas, and that it was going to happen essentially days before an extended weekend, and days before the return of those subpoenas were required?

A. No, I don't think that was -- I think that was just unflutitious maybe. It was not the kind of thing where we held up the subpoena so that it would hit at a bad time. In fact, half the time we don't even know it is a long weekend, because we work them any way. those things sometimes just pass us by.

My recollection was that when I came up with idea that it was a let's do it, and let's do it ASAP type of thing, and without regard for -- you know, it is a long weekend, and let's wait until the last second.

Q. And was there any regard placed to the attorney, or in other words, myself,

on whom these subpoenas were going to be served?

A. My recollection, Mr. Gross, is that there was already a hearing scheduled, and I don't know why I think that. Maybe you can refresh my recollection on that, but my recollection was that there was already a hearing scheduled either before Mr. Dunn, or before Judge Bach, or something like that, and it was very, very close to --

Q. I will refresh your recollection. There were no hearings during the same time period that you are talking about.

A. Well, my recollection is that there was, and I don't know why I think that. It is just something in my head.

Q. So, was there a discussion about -- in the nature of, hey, we can serve these at a certain time and that are going to cause maximum problems to Mr. Gross?

A. Oh, no, Mr. Gross. This was a

question of that we needed to get this thing resolved, and we needed to do it now. there are some serious problems here, and I don't really want to say this, but I will be honest with the court.

We were quite frankly concerned that too much lead time would afford an opportunity to -- for mischief. let me say that in that way.

* * *

Law Office of
Raymond B. Benzinger, P.G.
A Professional Corporation
Suite 410
2009 North 14th Street
Arlington, Virginia 22201

Raymond B. Benzinger (703) 525-1362
Mary M. Jolma FAX (703) 525-2930

October 13, 1992
Via Facsimile and Mail

Commissioner Charles C. Dunn
Dunn, McCormack, McPherson & Maxfield
3925 University Drive
Fairfax, VA 22030

Dear Commissioner Dunn:

Apparently our letter of October 6, 1992 with attached subpoenas was not as self explanatory as I had hoped. To the extent my previous letter resulted in a miscommunication with the Commissioner, I regretfully apologize and submit the following clarification.

(1) The subpoenas requested were in fact issued by the clerk of the court.

(2) Those subpoenas were in fact served upon Messrs. Gross and Crowe.

(3) No hearing was contemplated or noticed by us. Nor was it contemplated

that the Commissioner needed to be present for the delivery the material subpoenaed. We merely followed the applicable statute which contemplates return of the documents subpoenaed to the Commissioner's office. Hearing was, however, scheduled on a motion before Judge Bach on October 16, 1992. We now learn that Judge Bach will not be available on that date.

(4) The statute referenced allows "any party" to obtain the documents which we subpoenaed.

(5) If there is any charge for receipt of the documents at the office of the Commissioner, we will assume responsibility for paying all appropriate charges.

(6) While we have received Motion(s) to Quash the subpoenas as to both Mr. Gross and Mr. Crowe, neither of those motions has been set for a hearing.

(7) We expect that the subpoenas will

be adhered to as a valid order of the court. We intend to move for a Rule to Show Cause if they are not honored.

(8) We understand that Judge Bach will not be available until next Tuesday. We therefore suggest to counsel of record, in the event the subpoenas are not honored, a hearing on the next regular motions day, October 23, 1992, to resolve all of these issues. We shall file notices this week as appropriate. If counsel have any objections to this date, we would expect to be notified immediately.

(9) We would respectfully request that opposing counsel agree to the hearing date of October 23, 1992 instead of October 16, 1992. We further request that both Mr. Crowe and Mr. Gross agree to be present on October 23, 1992 in lieu of the subpoena date (10/16/92) for that hearing on the opposing motion.

Again, Commissioner Dunn, I apologize

for any misunderstanding that may have occurred. I was merely following what I thought was permitted by the statute.

Respectfully submitted,

/S/

Raymond B. Benzinger

RBB:md

cc: James Kurz, Esquire
Edward Gross, Esquire

Law Office of
Raymond B. Benzinger, P.G.
A Professional Corporation
Suite 410
2009 North 14th Street
Arlington, Virginia 22201

Raymond B. Benzinger (703) 525-1362
Mary M. Jolma FAX (703) 525-2930

October 6, 1992

Commissioner Charles Dunn
3925 University Drive
Fairfax, Virginia 22030

Re: Sirex USA, Inc. v. Aidant Inc. et al; At Law No. 93228

Dear Commissioner Dunn:

There are enclosed courtesy copies of four Subpoenas Duces Tecum for dual purposes. The Subpoenas order production of certain documents at your office on October 13, 1992, at 1:00 p.m., pursuant to the authority of Virginia Code §8.01-506.1 and further request that the witness appear on October 16, 1992 for a hearing before the Honorable Judge Bach, on exceptions to your report.

We greatly appreciate your services as a Commissioner in this complex and

difficult case. Copies of the Subpoenas are furnished to you herewith in order that you will be completely informed of proceedings in this matter.

Respectfully submitted,

/S/

Raymond B. Benzinger
Attorney for Allen A. Izadpanah

RBBmd
Enclosure
cc: Edward Gross, Esquire

Law Office of
Raymond B. Benzinger, P.G.
A Professional Corporation
Suite 410
2009 North 14th Street
Arlington, Virginia 22201

Raymond B. Benzinger (703) 525-1362
Mary M. Jolma FAX (703) 525-2930

October 15, 1992

James S. Kurz, Esquire
Kurz, Koch & Doland
Suite 260
1250 24th Street, N.W.
Washington, D.C. 20037

Re: At Law #93228

Dear Mr. Kurz:

I have your letter dated October 12, 1992 in which you inform me that Mr. Crowe will not be obeying the subpoenas. You also state that a motion is set to be heard tomorrow October 16, 1992, to quash the subpoenas. I have not received any notice of such a hearing except through your letter of October 12, i.e., no proper Rule F Notice has been filed or delivered to me. See Form CCR-201-202, paragraph 5. Nor did your "notice" give me the required time within which I might prepare.

To be sure, I checked with the clerk's office and the docket for tomorrow and learned that your "motion" is not on for hearing.

Lastly, I have removed the motion for 30-day stay from tomorrow's motions day docket to the October 30, 1992 docket when Judge Fortkort will be available. The appropriate Praecipe/Notice is enclosed.

If you have any questions concerning the foregoing, please feel free to contact me.

Sincerely,

/S/

Raymond B. Benzinger

Encl.
RBB:mdd

Dunn, McCormack, MacPherson & Maxfield
Attorneys at Law
3925 University Drive
Fairfax, Virginia 22030

Charles C. Dunn
Brian M. McCormack
H.L. MacPherson III
Charles J. Maxfield*
*Admitted Also in
The District of Columbia

591-6055
Area Code 703
Telecopier:
591-5151

October 14, 1992

Raymond B. Benzinger, Esq.
Attorney at Law
2009 North 14th Street, #410
Arlington, VA 22201

Re: Sirex v. Aidant - Law No. 93228

Dear Mr. Benzinger:

Thank you for your letter of clarification dated October 13, 1992.

I think it does clarify and take care of all of my concerns. I am assuming that your request in paragraph (9) on page two is directed to counsel and not to me since I have no authority to direct when motions will be heard by the Court.

Again, I do appreciate your letter clearing up my concerns.

To be sure, I checked with the clerk's office and the docket for tomorrow and learned that your "motion" is not on for hearing.

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October 14, 1992

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Again, I do appreciate your letter clearing up my concerns.

Very truly yours,

/S/

Charles C. Dunn

CCD/snt

cc: Edward Gross, Esquire